

MONTANA LEGISLATIVE HISTORY

Chapter 176 19 91

Bill H 269 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 1-29 ☒ c

1-31 ☒ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3-12 ☒ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

HB 270

	TRANSMITTED TO SENATE		
4/23	2ND READING GOVERNOR'S AMENDMENTS		
	CONCURRED	49	0
4/24	3RD READING GOVERNOR'S AMENDMENTS		
	CONCURRED	46	2
	RETURNED TO HOUSE		
4/29	SIGNED BY SPEAKER		
4/29	SIGNED BY PRESIDENT		
4/30	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 781		
		EFFECTIVE DATE: 5/17/91	

HB 269 INTRODUCED BY COCCHIARELLA, ET AL.

INCREASE PENALTY FOR REPEAT INDECENT EXPOSURE—
MAKE 3RD OFFENSE A FELONY

1/19	INTRODUCED		
1/19	REFERRED TO JUDICIARY		
1/19	FIRST READING		
1/19	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/26	FISCAL NOTE PRINTED		
1/29	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED		
2/02	2ND READING PASSED	94	4
2/05	3RD READING PASSED	96	3
	TRANSMITTED TO SENATE		
2/06	FIRST READING		
2/06	REFERRED TO JUDICIARY		
3/12	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	48	0
3/15	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/22	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 176		
		EFFECTIVE DATE: 10/01/91	

HB 270 INTRODUCED BY COCCHIARELLA, ET AL.

INCREASE PENALTY FOR REPEAT VIOLATIONS
OF PRIVACY IN COMMUNICATIONS

1/19	INTRODUCED		
1/19	REFERRED TO JUDICIARY		
1/19	FIRST READING		
1/19	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
1/26	FISCAL NOTE PRINTED		
1/29	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED		
2/02	2ND READING PASSED	93	4
2/05	3RD READING PASSED	98	1
	TRANSMITTED TO SENATE		
2/06	FIRST READING		
2/06	REFERRED TO JUDICIARY		
3/12	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED		
3/14	2ND READING CONCURRED	48	0
3/15	3RD READING CONCURRED	48	0

RETURNED TO HOUSE

1 HOUSE BILL NO. 269
2 INTRODUCED BY Charles W. Wilkerson
3 Don Wipert
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY
5 FOR REPEAT OFFENSES OF INDECENT EXPOSURE; MAKING A THIRD OR
6 SUBSEQUENT INDECENT EXPOSURE OFFENSE A FELONY; AND AMENDING
7 SECTION 45-5-504, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 45-5-504, MCA, is amended to read:

11 "45-5-504. Indecent exposure. (1) A person who, for the
12 purpose of arousing or gratifying sexual desire of himself
13 or of any person other than his spouse, exposes his genitals
14 under circumstances in which he knows his conduct is likely
15 to cause affront or alarm commits the offense of indecent
16 exposure.

17 (2) (a) A person convicted of the offense of indecent
18 exposure shall be fined an amount not to exceed \$500 or be
19 imprisoned in the county jail for any a term of not to
20 exceed more than 6 months, or both.

21 (b) On a second conviction, he shall be fined an amount
22 not to exceed \$1,000 or be imprisoned in the county jail for
23 a term of not more than 1 year, or both.

24 (c) On a third or subsequent conviction, he shall be
25 fined an amount not to exceed \$10,000 or be imprisoned in

1 the state prison for a term of not more than 5 years, or
2 both."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0269, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act increasing the penalty for repeat offenses of indecent exposure; making a third or subsequent indecent exposure offense a felony; and amending section 45-5-504, MCA."

ASSUMPTIONS:

1. This bill increases the penalty for repeat offenses of indecent exposure, making a third or subsequent offense a felony. The enhancement of the penalty includes fines and a prison term of up to 5 years for third or additional offenses; fines and a jail term of up to one year are allowed for a second offense.
2. At present, there are no inmates in Montana State Prison (MSP) convicted of violation of 45-5-504, MCA. Five probationers have been convicted of the offense; an average of 1.8 admissions to probation for this offense have occurred in the past five years. The Montana Board of Crime Control reports an average of 45 such offenses were committed each year in 1987, 1988, and 1989.
3. This bill likely will have a small but definitely negative impact on Montana's overcrowded corrections programs. If prosecutions are encouraged by the prospect of greater penalties, the impact could be greater.
4. Assume one admission to MSP per year for this offense.

FISCAL IMPACT:Department of Institutions

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Expenses	0	1,810	1,810	0	2,026	2,026
<u>Funding:</u>						
General Fund (01)	0	1,810	1,810	0	2,026	2,026


 ROD SUNDSTED, BUDGET DIRECTOR
 Office of Budget and Program Planning
 1-24-91
 DATE


 VICKI COCCHIARELLA, PRIMARY SPONSOR
 DATE

Fiscal Note for HB0269, as introduced

HB 269

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(H) JUDICIARY

PAGE NBR..... 86
 RUN TIME 13:25
 RUN DATE.... 06/04/91

CHAIRMAN--BILL STRIZICH
 NORMAL SCHEDULE==> SITE: ROOM 312-2

DAYS: M,T,W,T,F

TIME: 8:00 A.M.

SECRETARY-JEANNE DOMME

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REFERRER TO COMM	DATE OUT
HB0269	1/19	1/29		DO PASS		1/31
COCCHIARELLA, VICKI			INCREASE PENALTY FOR REPEAT INDECENT EXPOSURE--MAKE 3RD OFFENSE A FELONY			
HB0270	1/19	1/29		DO PASS		1/31
COCCHIARELLA, VICKI			INCREASE PENALTY FOR REPEAT VIOLATIONS OF PRIVACY IN COMMUNICATIONS			
HB0272	1/19	1/29		PASS AS AMENDED		1/30
BRADLEY, DOROTHY			CREATE THE MONTANA COMMUNITY CORRECTIONS ACT			
HB0275	1/19	2/18		DO PASS		2/19
STRIZICH, BILL			PROVIDE A FINE FOR FRAUDULENTLY OBTAINING DANGEROUS DRUGS			
HB0276	1/19	2/18		PASS AS AMENDED		2/19
STRIZICH, BILL			CONTINUING CRIMINAL ENTERPRISE			
HB0284	1/19	1/30		PASS AS AMENDED		2/19
FOSTER, MIKE			REVISE TIME CHILD SUPPORT TERMINATES			
HB0286	1/19	1/31		DO PASS		2/04
STRIZICH, BILL			REDEFINE YOUTH IN NEED OF SUPERVISION; APPLY TO INFORMAL PROCEEDING			
HB0289	1/21	1/30		TABLED ON 02/04		
BENEDICT, STEVE			GENERALLY REVISING LAWS PERTAINING TO MARRIAGE TERMINATION			
HB0291	1/21	1/30		TABLED ON 02/01		
BENEDICT, STEVE			REQUIRE T.R.O. TO BE FILED IN JUSTICE COURT UNLESS CASE PENDING IN DIS COURT			
HB0292	1/21	1/30		DO PASS		2/01
BENEDICT, STEVE			GOVERNMENTAL ENTITIES REQUIRED TO PAY CERTAIN COURT FEES			
HB0302	1/21	1/29		TABLED ON 01/31		
COCCHIARELLA, VICKI			CREATE OFFENSE OF DISORDERLY CONDUCT BY PEERING AT AN OCCUPANT OF A BUILDING			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 29, 1991,
at 8:06 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB #272
MONTANA COMMUNITY CORRECTIONS ACT

Presentation and Opening Statement by Sponsor:

REP. BRADLEY, HOUSE DISTRICT 79, this is a Montana Community Corrections Act. The advisory council has a whole variety of alternatives that are mid-level alternatives. Alternatives that communities and judges can work with that we have not had up until this time. We have put judges in the position of dealing with the two alternatives on both sides of the spectrum and that is either probation or prison. We are talking about something in the middle here that deals with communities, less cost and more responsibility to the offenders. I think it is important to

Proponents' Testimony:

John Conner, Montana County Attorney Association, stated these bills were recommended by the County Attorney's proposals that they wanted to offer to you this year. The intent behind these bills was never discussed in terms of punishment but rather in terms of what can be done to get court jurisdiction for longer period of time for people who commit these type of offenses. With the given penalty as the law provides now, there isn't enough time to force them into some type of situation where they can be evaluated and treated.

Betty Wing, Deputy County Attorney, stated she brought these bills to the County Attorney's Association for two reasons. The first reason was it was a request of our child protection team. The child protection team is made up of social workers, police officers, school counsellors, psychologist, attorneys, victims, and we are charged with protecting children from sexual and assaultive behavior. It was our concern these people who perform the acts we are talking about, are in the initial stages of a more serious problem. We would like to see people like this in a long term treatment program. In order to do this we need you to pass this bill so we can have a longer penalty. The second reason we support this bill is for our own benefit. In our office we keep getting repeat offenders and they seem to be crying out for help by letting us know their every move. These offenders need our help and we need to save our communities from these people.

Janice Frankino-Doggett, Women's Law Section of the State Bar, we represent the views of men and women who belong to our organization. A person's home and privacy can be invaded by the telephone. It is a very terrifying experience and we ask the committee to pass this bill.

Diane Sands, Montana Women's Lobby, stated have a long agenda that deal with sex crimes and these pieces of legislation are part of that package. These are not victimless crimes. Unfortunately, these are normal everyday experience for women. We ask that you pass this bill to get them off the phone and into treatment.

Star Jameson, Coordinator - Women's Place, gave written testimony in favor of HB #269, 270. EXHIBIT 7

Michael Scolotti, Clinical Psychologist, stated he has worked with sexual offenders and especially seeing nuisance offenders. This bill will allow continuing follow-up of these offenders. There are many type of behaviors of these offenders. They are not usually the type of offenders that do just one certain sexual offense they will do a variety of offenses. These people need counseling and you can give us the opportunity to help these people in counseling.

Questions From Committee Members:

REP. MEASURE asked REP. BRADLEY that page 13 and 14 of the bill in section 10, I am concerned about the schedule for taking care of financial obligations for the offender. It has always been my thought that one of the big problems with incarcerating people are the problems imposed on the family. I feel the family support should be paid first, do you have any problems with an amendment of that nature? REP. BRADLEY said no she does not and the committee should feel free to organize the priorities as you see fit. He then asked her if she envisions these people as being placed for work obligations in any other place than MacDonalds? REP. BRADLEY said the individuals who are running the community correction facilities had a variety of places these people could work. The community was behind this arrangement.

REP. MEASURE asked REP. BRADLEY how, with the cost of mental health, do you feel you can take care of the needs of these people for just \$1500 a month? REP. BRADLEY said some of the buildings for this purpose do not have to be built they are already standing so this will not cost the state anything. If we left some of this innovation at community level we could see it happen. Of course, some facilities will cost more than others.

REP. RUSSELL asked REP. BRADLEY if there is legislation in the bill that would make it possible for Indian Tribes to be a private contract to have one of these facilities and the tribe would recognize these jurisdictions? REP. BRADLEY said if you would like to add some language to make it clear I would support that. The language in section 5 and section 7 has non-governmental agencies in it and this would cover your concern but you are welcome to make it clearer in the bill.

Closing by Sponsor:

REP. BRADLEY stated she would like to thank all the people who came to support this bill and would hope the committee would give it a do pass.

HEARING ON HB #269 & 270INCREASE PENALTY FOR REPEAT INDECENT EXPOSUREINCREASE PENALTY FOR REPEAT VIOLATIONS OF PRIVACY COMMUNICATIONSPresentation and Opening Statement by Sponsor:

REP. COCCHIARELLA, HOUSE DISTRICT 59, stated that people take these kinds of crime and make fun of them when actually the things that go on in relation to obscene phone calls and indecent exposure are acts of terrorism. They strike terror in hearts and souls and have lasting impact on people that are victims of those kinds of crimes. We are asking you to increase the penalties of these crimes in order to try and keep the offender longer in custody to get treatment for them.

Don Silvers, Center for Sexual Health - Mental Health Services, stated he no longer finds these types of crimes humorous. The victims are frequently very young, alone, vulnerable, and female. There is little debate that victims more often than not feel assaulted, confused, frightened, disgusted, pursued and apprehensive about their safety for the future. Perpetrators don't necessarily fit the pathetic image of a frumpy old man in a rain coat, the men I have worked with are young, angry, calculated, predatory, compulsive and sexually obsessed. They all rationalize their behavior in a need for more victims, more danger, more arousal.

SEN. FRED VAN VALKENBURG, stated it was amazing to hear in the first few days of the session the sort of insensitive comments being made about this particular subject. I think you have heard the importance of this issue and the situation that exists out here and I hope you are not insensitive to this issue. There is a serious problem out there and one that needs addressing in some fashion or another and I hope that this is a very minor step towards dealing with that. We are not talking about first offenders in respect to these bills, we are talking about people who have been previously convicted of these offenses who have been told by judges to stop and have already been sentenced to a county jail and not responded to this sanction. We are not asking, except in most extreme circumstance, that people be sent to the state prison. Rather, we want to get them into programs.

Opponents' Testimony: none

Questions From Committee Members:

REP. WHALEN asked SEN. VAN VALKENBURG why don't we have some type of program that has first offenders go to counseling such as our DUI offenders? SEN. VAN VALKENBURG stated he was an observer in the drafting of the bill and it is coming from a prosecutorial prospective that they are following an existing a law. We have to have something hanging over their heads, such as a sentence, in order to give them an incentive to stay in the treatment program.

REP. LEE asked Mr. Scolotti how long is the treatment for these kinds of people? Mr. Scolotti said it takes between two and a half years to four years but not all offenders stay for that length of time.

REP. LEE asked Mr. Conner if the sentence is shorter than the treatment program, is there any way that can be structured so completion of the treatment is contingent upon not invoking the jail term? Mr. Conner said under the law you can only obtain jurisdiction over that person and therefore only order the kinds of treatment for as long as our legal right to have jurisdiction.

Closing by Sponsor:

REP. COCCHIARELLA stated as the committee has heard from the testimony given there is a great need to increase the penalties for these crimes.

HEARING ON HB #302CREATE OFF. OF DISORDERLY CONDUCT BY PEERING AT OCCUPANT OF BLDG.Presentation and Opening Statement by Sponsor:

REP. COCCHIARELLA, HOUSE DISTRICT 69, stated this is the peeping person bill. It has been separated from the other two because this is new language in the law. It was amazing to me to find there was not law against peeping in the state of Montana. It is an offense that should have stiff penalties.

Proponents' Testimony:

John Conner, Montana Attorney's Association, stated this bill was considered important because by the association because there is no where in the law now that effectively deals with people who commit offenses as voyeurs. That is basically what this bill does. There was some consideration to charge these people with criminal trespass. The problem with that is the person is convicted of criminal trespass and you have no idea that this person is a voyeur and has committed a sexual related offense. The next problem is you have to go through all the hoops of proving whether or not the person has a license or was invited to be on the property or if they did not give that person an invitation to come onto his property. This is inappropriate for the crime that is being committed. This bill is appropriate for the crime of voyeurism. We didn't include second offense punishments in this bill because we thought it best to offer it up to you as a new offense.

Betty Wing, Missoula Deputy County Attorney, stated this bill is also a concern of our Child Protection Team. There are three things that concern us in the language. First, it has to be on the property of another. You can't be walking up a public street and happen to look into someone home and see someone inside. You have to be on their property. Secondly, it has to be inside a structure. It doesn't include someone looking over the fence in someone backyard and seeing someone in a bikini. It has to be inside someone's home or a building. Thirdly, with the purpose of arousing or gratifying a sexual desire. We are going to have to prove that to a jury and it won't be easy and we would have to look at the overall circumstances.

Janice Frankino-Doggett, Women's Section of State Bar, stated it is important this offense be included as a specific offense in the law.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE

Jan. 29, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/	<i>abs</i>	
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/	<i>abs</i>	
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/	<i>abs</i>	
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/	<i>abs</i>	
REP. TIM WHALEN	/	<i>abs</i>	
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. HB# 269
DATE Jan. 29 SPONSOR(S) Rep. Cocchiarella
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
BETTY WING	MISSOULA COUNTY ATTORNEY	X	
John Connor	MT County Atty Assn	✓	
Lanica Duggott	Women Law Section Stat Bar	X	
Diane Sands	MT Women Lobby	X	
Fred Van Valkenburg	Senate Dist. 30	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 31, 1991,
at 7:35 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB #269

Motion: REP. GOULD MOVED HB 269 DO PASS

Vote: HB 269 DO PASS. Motion carried 18 to 1 with Rep. Brown
voting no.

EXECUTIVE ACTION ON HB #270

Motion: REP. GOULD MOVED HB 270 DO PASS.

HOUSE STANDING COMMITTEE REPORT

January 31, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 269 (first reading copy -- white) do pass .

Signed: 

Bill Strizich, Chairman

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
 FINAL COMMITTEE REPORT OF REFERRED BILLS
 COMMITTEE--(S) JUDICIARY

PAGE NBR..... 4
 RUN TIME09:18
 RUN DATE.... 05/20/91

CHAIRMAN--RICHARD PINSONEAULT
 NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: M,T,W,T,F

TIME: 10:00 A.M.

SECRETARY-JOANN BIRD

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0173	2/04	3/21		CONCUR		3/23
PAVLOVICH, BOB			CLARIFY CERTAIN PROCEDURES OF JUDICIAL STANDARDS COMMISSION			
HB0178	1/25	2/07		CONCUR		2/07
TOOLE, HOWARD			UNIFORM INTERNATIONAL WILLS ACT			
HB0191	1/31	3/18		CONCUR		3/18
MEASURE, BRUCE			UNIFORM CONFLICT OF LAWS -- LIMITATIONS ACT			
HB0194	1/25	2/07		CONCUR		2/07
TOOLE, HOWARD			EXEMPT INDIGENT FROM POSTING BOND ON APPEAL TO DISTRICT COURT			
HB0211	1/31	3/12		CONCUR		3/12
BRADLEY, DOROTHY			AMENDING THE SEXUAL INTERCOURSE WITHOUT CONSENT STATUTE			
HB0212	2/21	3/08	3/11	ADVERSE RPT ADOPT		3/16
COHEN, BEN			PROVIDE FOR FREEDOM OF EXPRESSION BY STUDENTS			
HB0221	1/31	3/06		CONCUR		3/06
TOOLE, HOWARD			REVISION OF AMOUNT OF FINE CREDITED FOR JAIL TIME FOR TRAFFIC VIOLATIONS			
HB0228	2/04	3/15		CONCUR AS AMENDED		3/19
LARSON, DON			ALLOW EMERGENCY RESPONDERS TO RECOVER COST FOR HAZARDOUS MATERIALS INCIDENT			
HB0268	2/11	3/20		CONCUR AS AMENDED		3/20
MEASURE, BRUCE			CREATE APPELLATE DEFENDER COMMISSION & OFFICE OF APPELLATE DEFENDER			
HB0269	2/06	3/12		CONCUR		3/12
COCCHIARELLA, VICKI			INCREASE PENALTY FOR REPEAT INDECENT EXPOSURE--MAKE 3RD OFFENSE A FELONY			
HB0270	2/06	3/12		CONCUR		3/12
COCCHIARELLA, VICKI			INCREASE PENALTY FOR REPEAT VIOLATIONS OF PRIVACY IN COMMUNICATIONS			

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 12, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: none

HEARING ON HOUSE BILL 307

Presentation and Opening Statement by Sponsor:

Representative Joe Quilici, District 71, told the Committee HB 307 extends the filing time requirements for cases involving sexual offenses against minors. He said present law requires that a crime must be reported to law enforcement officers within 72 hours or that good cause be shown. Representative Quilici explained that HB 307 eliminates the 72 hour requirement, and said the funding is actuarially sound and would not affect compensation.

Proponents' Testimony:

John Connor, Montana County Attorneys, told the committee that Mike McGrath, Lewis and Clark County Attorney is in Appropriations and could not be present, but the bill came about through Mr. McGrath's office. He said child abuse victims are unable to get compensation, when they have not reported in time, and that these cases then require administrative review to waive the time requirement. Mr. Connor explained that he does not believe that is

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously.

HEARING ON HOUSE BILLS 269 AND 270Presentation and Opening Statement by Sponsor:

Representative Vicki Cocchiarella, District 59, advised the Committee she would like hear HBs 269 and 270 at the same time, as they both deal with incidents against children. She reported that a nine-year-old Missoula girl was traumatized for several days following an obscene phone call, and said two children from Billings were traumatized by a man who exposed himself to them. Representative Cocchiarella further reported that a blind woman from Missoula, whose husband is an invalid, repeatedly receives obscene phone calls from a mentally disturbed man and has turned to her (Cocchiarella) for help. She said people who do this are violent or potentially violent, and urged the Committee to think of their own homes and their spouses who may be alone while they were at the Legislature.

Representative Cocchiarella told the Committee that Mike Scalloti testified in the House and presented research reported from a New York study indicating that of 142 exhibitionists studied there were 73,000 victims and 77,700 acts of exposure, mostly to women and children. She said 35 of the offenders committed rape. Representative Cocchiarella advised the Committee that 19 obscene phone callers had approximately 2,000 victims out of 2,600 calls, and 7 of them had committed rape. She further advised them that a study in Missoula of 22 exhibitionists, showed 33,000 acts were committed to more than 30,000 victims. She said a study of obscene phone callers showed 1,500 acts occurring to 1,000 victims, and an average of 300 phone calls.

Representative Cocchiarella told the committee the bills create an increased penalty for these crimes, including more treatment time. She said Dr. Scalloti testified that these programs were successful, and asked the Committee to take care of women and children in Montana.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, explained that both bills were requested by the County Attorneys, as the feeling was that they were dealing with indecent exposure and that these people need to be looked at in an evaluation and treatment area, as well as with regard to penalties. He said confrontation works, and both bills seek to do this.

Betty Wing, Deputy County Attorney, Missoula, said the bills were the result of the Child Protection Team of which Dr. Scalloti is a member. She explained a situation in Missoula where a young man won't quit making obscene telephone calls, and is in jail for three months. Ms. Wing stated this is not enough time to treat the young man.

Ms. Wing advised the Committee that cases can be taken into district court to get the supervision of an adult probation and parole officer. She commented that there are many acts of indecent exposure on the University of Montana campus.

Ron Silvers, Director, Center for Sexual Health, Helena, said the Center serve more than 100 clients, both perpetrators and victims. He said victim clients do not regard perpetrators as humorous, but as frightening. Mr. Silvers explained that the vast majority of offenders engage in multiple sex crimes. He explained that the victims learn the same common elements of power and control from the offender, and that offenders do not stop, but continue to seek pleasure. Mr. Silvers told the Committee there are very few self-help referrals, and that external motivation has proved to be very helpful (along with incarceration) in the beginning. He further stated that many choose prison rather than therapy because it is so difficult.

Janice Frankino Doggett, Women's Law Section of the State Bar, told the Committee that, as a law student, she was a victim of obscene phone calls for two and one-half years. She said she left Missoula to get away, but he called once in Helena at her parents' home.

Colette Baumgardner, Legislative Aide, Democratic Women's Caucus for both the Senate and the House, stated her support of the bills.

Star Jameson, Director, Rape Crisis Center, Missoula, read from prepared testimony in support of HB 270, (Exhibit #3).

Diane Sands, Montana Women's Lobby, stated her support for both bills. She said these are not victimless crimes and it is important that the offenders get treatment. She said it is equally important that the message gets out as to the seriousness of these crimes, and to stop violence against women and children.

Senator Fred Van Valkenburg, District 30, asked the Committee to support the bills and said he would carry them in the Senate.

Opponents' Testimony:

There were no opponents of the bill.

Questions From Committee Members:

Senator Pinsoneault asked John Connor what would be the best means to trace an obscene phone call and how difficult it would be. John Connor replied that most victims call law enforcement agencies who work with the phone companies. He commented that this is not difficult to do.

Senator Towe asked John Connor why language was included in (B) of HB 270 stating "repeated disturbances by phone calls". Mr. Connor replied that language is in the bill with respect to (A) and (b) only, and not in other areas where it is not as serious. He said he prosecuted a person in Ravalli County who had called the county attorney and his wife, and had the power cut off at a judge's home. Mr. Connor told the Committee that repeat offenses need to be dealt with more severely, as they can be very harmful.

Closing by Sponsor:

Representative Cocchiarella asked the Committee to think about these bills, and to remember that they were drafted to help people and not to put them away.

EXECUTIVE ACTION ON HOUSE BILL 270Motion:

Senator Grosfield made a motion that HB 270 BE CONCURRED IN.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Grosfield carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 269Motion:

Senator Grosfield made a motion that HB 269 BE CONCURRED IN.

Discussion:

There was no discussion on the bill.

Amendments, Discussion, and Votes:

There were no amendments.

Recommendation and Vote:

The motion made by Senator Grosfield carried unanimously. Senator Pinsoneault said he would carry the bill.

HEARING ON HOUSE BILL 735Presentation and Opening Statement by Sponsor:

Representative Bruce Measure, District 6, said HB 735 deals with insurer reimbursements to injured or third party claimants, who have a hard time collecting for incidental damages. He stated Senator Brown had a similar bill, and that they met with Mike Sherwood, Montana Trial Lawyers Association, to substantially alter this bill.

Proponents' Testimony:

Eric Thueson, Montana Trial Lawyers Association, told the Committee it was hard to understand any opposition to the bill under the Unfair Trade Practices Act. He said there are no ulterior motives in hanging on to money on the part of a person who owes it, and that if he owed money he would pay it. Mr. Thueson commented that the problem is the insurance companies don't want to deal that way. He submitted findings in a case before Judge John McCarvel (Exhibit #4).

Mike Sherwood, Montana Trial Lawyers Association, advised the Committee he received a call shortly before the bill drafting request deadline concerning problems a Kalispell attorney had regarding liability when it is reasonably clear that the monies should be paid. He commented that he has no personal experience in this area.

Mr. Sherwood told the Committee the original bill draft was completely different from the bill before them. He explained that SB 281 (Senator Bob Brown) was designed to address the same problem, i.e., requiring the driver to carry a "mini" health plan. Mr. Sherwood said it did not seem fair to place the burden on the insured to protect them from unfair trade practice, and further stated that after SB 281 was tabled, HB 735 was very much revised. He commented that testimony in the House indicated that this was not a problem.

Mr. Sherwood said it is very clear in the rulings of both Federal Judges Hatfield and Lovell that third party claimants do not have the same rights as the insured and there is no "bad faith". He said the bill is needed to uphold the language of Judge

ROLL CALL

SENATE JUDICIARY

COMMITTEE

52nd LEGISLATIVE SESSION -- 1991

Date 3-12-91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 12, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 269 (third reading copy -- blue), respectfully report that House Bill No. 269 be concurred in.

Signed: 

Richard Pinsoneault, Chairman

LB 3/12/91
Amd. Cord.

Sec. of Senate

DATE

3-12-91

COMMITTEE ON

Judiciary

HB

VISITORS' REGISTER 211-269-270-307-735

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kandace K. Kellow	Women's to Place	269 270	X X	
STAR JAMESON	VICTIMS OF RAPE	270	✓	
BETTY WING	MSLA CHILD PROTECTIVE TEAM Missouri Co ATTORNEY	269 270	X	
R. Ashel	State Farm Ins	735		X
JANE PHILLIPS	NAT. ASSOC IND. INS. ALLIANCE AMER. INS	735		X
Cheryl Bryant	Crime Victims Unib	307	✓	
Tom Hopgood	HHH Ins Assoc America	HB 735		✓
Tom Hamboldt	PARMERS Ins. Group	HB 735		X
John Maynard	State Farm	HB 735		X
Jollette Baumgardner	Democratic Women's Caucus	HB 307	✓	
"	"	HB 269	✓	
"	"	HB 270	✓	
Jane Daggitt	Women Law Section State Bar	HB 307	✓	
"	"	HB 269	✓	
"	"	HB 270	✓	
Eric Thuesen	Montana Trial Lawyers	HB 735	X	
Randy Dix		HB 735	X	
Lor Silvers	Center for Sexual Health Mental Health Services	269 HB 270	X	
John Connor	MT County Attys Assn	HB 307	X	
John Connor	" " " "	269 HB 270	X	
John Connor	" " " "	HB 211	X	
Jacqueline N. Terrell	Am. Ins. Assoc	HB 735		X
O Brent Cronley	Rep.	HB 735		X